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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,922

09/12/2003

Joy Mangano

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8375

7590

03/29/2004

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EXAMINER

SHAHER, RICKY D

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/661,922

Applicant(s)

MANGANO, JOY

Examiner

Ricky D. Shafer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12 September 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Monk ('627).

Monk discloses a mirror assembly comprising a frame (15) having a peripheral groove (22,23), at least one reflector (16) mounted in said frame and a gooseneck (11) peripherally coupled to said frame and adapted to be received by said peripheral groove. Note Figures 1-4 and the associated description thereof.

3. Claims 1, 6 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Haas et al ('860).

Haas et al discloses a mirror assembly comprising a frame (18) having a peripheral groove (26), at least one reflector (22) mounted in said frame and a gooseneck (12) peripherally coupled to said frame and adapted to be received by said peripheral groove. Note Figures 1, 2 and 4 and the associated description thereof.

4. Claims 1-3 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisz ('437).

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Weisz discloses a mirror assembly comprising a frame (10) having a peripheral groove (14), at least one reflector (10 or 12) mounted in said frame and a gooseneck (11) peripherally coupled to said frame and adapted to be received by said peripheral groove. Note Figures 1-5 and the associated description thereof.

5. Claims 1- 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Winslow ('049).

Winslow discloses a mirror assembly comprising a frame (4) having a peripheral groove (adjacent element 5), at least one reflector (10) mounted in said frame and a gooseneck (11) peripherally coupled to said frame and adapted to be received by said peripheral groove. Note Figures 1-3 and the associated description thereof.

6. Claims 1-5 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Duncan ('130).

Duncan discloses a mirror assembly comprising a frame (c) having a peripheral groove (c1), at least one reflector (A) mounted in said frame and a gooseneck (D,d2) peripherally coupled to said frame and adapted to be received by said peripheral groove. Note Figures 1-3 and the associated description thereof.

7. Claims 1-4, 6, 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Christianson ('157).

Christianson discloses a mirror assembly comprising a frame (16,22) having a peripheral groove (16c), at least one reflector (24,68) mounted in said frame, a gooseneck (18) peripherally

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coupled to said frame and adapted to be received by said peripheral groove and a blunt cap (14).

Note Figures 1 and 6 and the associated description thereof.

8. Claims 1-3, 5, 6, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rub ('959).

Rub discloses a portable mirror device comprising a substantially planar, circular frame [(1,2), (11,139), (52), (110,111)] having a contiguous groove (14) extending along its entire circumference or frame periphery, a reflector (5, 30, 57) mounted in the frame and an annular member or gooseneck (115) coupled to the groove, note figures 5, 8-10, 14-16 and 26-28 along with the abstract and claim 23, wherein element (115) inherently has a certain degree of flexibility or rigidity in order to be wound (bent) into the groove.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christianson ('157).

Christianson discloses all of the subject matter claimed, note the above explanation, except for the length of the gooseneck being approximately 25 inches long.

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It would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to modify the length (size) of the gooseneck of Christianson to be approximately 25 inches long in order to accommodate for less than average sized individuals, since such a modification would have involved a mere change in the length (size) of a component. A change in length (size) is generally recognized as being within the level of one of ordinary skill in the art. Note *In re Rose*, 105 USPQ 237 (CCPA).

11. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monk ('627).

Monk discloses all of the subject matter claimed, note the above explanation, except for the gooseneck being bent into a substantially semi-circular configuration.

It would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to modify the rectangular shaped configuration of the gooseneck of Monk to be bent into a substantially semi-circular configuration in order to alternatively support the mirror assembly, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of one of ordinary skill in the art. Note *In re Dailey et al*, 149, USPQ 47.

As to the limitations of claim 11, it is well known to employ a blunt cap to an end of a circular member in the same field of endeavor as well as in analogous art for the purpose of preventing an individual from possible injury.

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Therefore, it would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention to modify the end of the gooseneck of Monk to include a blunt cap, as is typically used and employed in the art, in order to prevent an individual from possibly injury.

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,682,198. Although the

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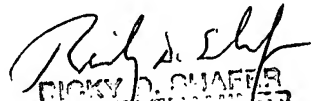
conflicting claims are not identical, they are not patentably distinct from each other because the present application (10/661,922) discloses no additional invention or discovery other than what was already claimed and patented in U.S. Patent 6,682,198 or what would have been obvious to one of ordinary skill in the art at the time the invention was made.

U.S. Patent 6,682,198 discloses a portable mirror comprising a frame (14) having a peripheral groove (16), a reflector (12) mounted in said frame, a gooseneck (18) peripherally coupled to said frame and adapted to be received in said peripheral groove, a magnifying mirror (13), and the arrangement thereof. Note figures 1-9.

14. Any inquiry concerning this communication should be directed to R.D. Shafer at telephone number (571) 272-2320.

RDS

March 22, 2004

  
RICKY D. SHAFER  
PATENT ENGINEER  
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